

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

SC Court of Appeals

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2018-001827

Southeast Payphone Group, Inc., a  
South Carolina Corporation,

Appellant,

v.

Water Flow Business Brokers, LLC, a  
South Carolina Limited Liability Company,  
and Ryan Cannon,

Defendants,

Of whom Ryan Cannon is the,

Respondent.

**FINAL BRIEF OF RESPONDENT**

DENNIS N. CANNON, JR.  
512 Rutledge Street  
PO Box 532  
Camden, SC 29020  
Phone: (803) 432-4402  
*Attorney for Respondent*

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## **STATEMENT OF ISSUE ON APPEAL**

1. Whether the trial court committed error in granting the Respondent Cannon's Motion to Dismiss.

## STATEMENT OF THE CASE

Plaintiff-Appellant has set forth the basic facts pertaining to the appeal in its brief. In short, Defendant Water Flow Business Brokers, LLC ("Water Flow") is a South Carolina Limited Liability Company. Defendant Respondent Ryan Cannon ("Cannon") is an agent and officer of Water Flow. Water Flow entered into an Asset Purchase Agreement ("APA") with Plaintiff-Appellant (R.pp.11-20). Cannon signed the contract as agent for Water Flow. Appellant's Complaint alleges three causes of action related to the alleged violations of the APA contract: First Cause of Action – Breach of Contract; Second Cause of Action – Unjust Enrichment; Third Cause of Action – Fraud/Intentional Misrepresentation – Water Flow and Cannon (R.pp.5-10). Cannon is named only in the Third Cause of Action. In its statement of facts, Appellant sets forth its allegations in the third cause of action (Fraud/Intentional Misrepresentation – Water Flow and Cannon) of its Complaint, but conveniently omits paragraph 37, which states: "The actions of Cannon are also imputed to Water Flow under the doctrine of respondent superior." (R.p.9) Cannon filed an Answer and Counterclaim (R.pp. 25-32) and denied any wrongdoing. Cannon then moved to dismiss the action against him on the ground that he was acting in his representative capacity as an officer and agent for Water Flow, and signed the APA in such representative capacity and, therefore, Cannon could not be held personally liable for any cause of action based on the contract. (R.pp.38-39)

The trial court granted Cannon's motion to dismiss finding that it "is undisputed," and Appellant's Complaint "concedes by its pleadings that Defendant Ryan Cannon was acting in his representative capacity as an officer and agent for the Defendant Water Flow Business Brokers, LLC." (R.p.2) Accordingly, the trial court, citing authority, held that Cannon, "acting as agent for Defendant Water Flow as recognized by Plaintiff is not personally liable for damages as claimed by Plaintiff arising from the alleged breach of the agreement at issue here, and, therefore, should be dismissed as a party defendant." (R.p.4). This appeal follows.

### STANDARD OF REVIEW

While the court, in reviewing a motion to dismiss under SCRCP 12(b)(6), must consider the complaint in the light most favorable to the Plaintiff, the court need not accept legal conclusions drawn from the facts or unwarranted inferences, unreasonable conclusions, or arguments. *Hughes v. Wells Fargo Bank, N.A.*, 617 F. App'x 261, 263 (4th Cir. 2015) (under Fed. R. Civ. P. 12(b)(6)); *Builder Mart of America, Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (Ct. App. 2002), (citing *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)), *overruled on other grounds by Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003); *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623,

635, 699 S.E.2d 699, 705 (Ct. App. 2010) (on a Rule 12(b)(6) motion, the court is required to presume all well pled facts, not propositions of law, to be true); *Madison v. Am. Home Prod. Corp.*, 358 S.C. 449, 595 S.E.2d 493 (2004) (proper to decide purely legal issue on a motion to dismiss).

## FACTS

The Plaintiff and the Defendant Water Flow Business, LLC, a South Carolina Limited Liability Company, entered into an Asset Purchase Agreement on March 17, 2016 wherein the Plaintiff agreed to buy and the Defendant Water Flow Business Brokers, LLC agreed to sell the Plaintiff certain ATM (Automatic Teller Machine) assets. Ryan Cannon is an agent and officer of the Defendant Water Flow Business Brokers, LLC and acted on behalf of the Defendant Water Flow Business Brokers, LLC, insofar as transacting business with the Plaintiff.

At some point the relationship between the parties deteriorated with the Plaintiff essentially asserting that the Defendant Waterflow did not have “good and marketable title” to the assets it conveyed to the Plaintiff. The Plaintiff sued the Defendants Water Flow Business Brokers, LLC and Ryan Cannon for Breach of Contract, Unjust Enrichment and Fraud/ Intentional Misrepresentation. The Defendants’ essentially denied all of the Plaintiff’s material allegations.

## ARGUMENT

### THE TRIAL COURT DID NOT ERR IN GRANTING RESPONDENT'S MOTION TO DISMISS

The trial court's Order dismissing this action against Cannon correctly holds that Cannon, acting as agent for Defendant Water Flow, is not personally liable for damages as claimed by Plaintiff-Appellant in this action arising from the breach of the contract at issue and, therefore, should be dismissed as a party-defendant and the trial court applied the correct standard in ordering dismissal. As the trial court Order dismissing Plaintiff's action against Cannon states, there is no dispute, as Plaintiff recognizes by its allegations set forth in its Complaint, that Cannon acted as agent of Water Flow, a South Carolina Limited Liability Company, in signing the APA entered into between Plaintiff and Water Flow. Indeed, paragraph 37 of the Complaint states that Cannon's actions are imputed to Water Flow under the doctrine of respondent superior. (R.p.9) As the trial court Order states, where an agent enters into a contract for a known principal, while acting within his authority as agent, he is not personally liable on the result of the contract. (R.p.2); *see Green v. Indus. Life & Health Ins. Co.*, 199 S.C. 262, 18 S.E.2d 873 (1942).

Further, as stated in the trial court's Order, S.C. Code Ann. § 33-44-303 shields Cannon from personal liability for any acts he took as agent of Defendant Water Flow, a limited liability company. Section 33-44-303 provides as follows:

(a) Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

(b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

(c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(1) a provision to that effect is contained in the articles of organization;  
and

(2) a member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

(emphasis added). This language shields a member or manager acting as agent for an LLC from any personal liability for the liability of the LLC, whether an action against the LLC is brought in contract or tort.

In its brief, Appellant tries to distinguish *Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 753 S.E.2d 840 (2012), cited by the trial court in support of its Order, by noting the case's reference to the opinion in *16 Jade Street, LLC v. R. Design Const. Co. LLC*, 398 S.C. 338, 728 S.E.2d 448 (2012). However, Appellant fails to note that this opinion was withdrawn and superseded on rehearing by the court's opinion at 405 S.C. 384, 747 S.E.2d 770 (2013). This latter opinion states:

Carl Aten, Jr. appeals the circuit court's order finding him personally liable for torts he committed as a member of a limited liability company (L.L.C.). Although this case poses the novel question of whether the Uniform Limited Liability Company Act (L.L.C. Act) shields an L.L.C. member from personal liability from his own torts, we save that discussion for another day and find Aten has committed no actionable tort. We therefore reverse the portion of the circuit court's order which imposes personal liability upon Aten.

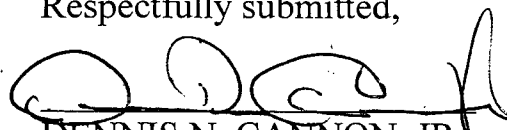
*Id.* 405 S.C. at 386, 747 S.E.2d 771 (emphasis added). Thus, *16 Jade Street, LLC* does not support Appellant's position that section 33-44-303 does not shield Cannon from liability in this action. It should be noted that the withdrawn opinion in *16 Jade Street, LLC* stated that the language of § 33-44-303(a) "may be read to shield a member [of an LLC] from personal liability for torts he commits in furtherance of the LLC's business." 398 S.C. at 345, 728 S.E.2d at 452.

Therefore, based on SCCA § 33-44-303 and on the other authority cited here and by the trial court, the trial court properly dismissed this action against Cannon, who was acting in his capacity as agent for Water Flow, a limited liability company, and did so under the correct standard.

## CONCLUSION

Based on the foregoing authority and the standard of review set out above, the trial court did not err in dismissing this action against Cannon. Therefore, it is respectfully requested that the court affirm the Order of dismissal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis N. Cannon, Jr.", written over a horizontal line.

DENNIS N. CANNON, JR.

Dennis N. Cannon, Jr., P.C.

512 Rutledge Street

PO Box 532

Camden, SC 29020

Phone: (803) 432-4402

*Attorney for Respondent*

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.

April 18, 2019

A handwritten signature in black ink, appearing to read "Dennis Cannon, Jr.", written over a horizontal line.

Dennis N. Cannon, Jr.

**Dennis N. Cannon, Jr., P.C.**

P.O. Box 532

Camden, SC 29021-0532

(803) 432-4402

*Attorney for Respondent*